

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

LOCAL NO. 1590, INTERNATIONAL :
ASSOCIATION OF FIREFIGHTERS :
PETITIONER :
v. : ULP No. 89-05-037
CITY OF WILMINGTON :
RESPONDENT :

HEARING OFFICER:

CHARLES D. LONG, JR., ESQ.

HEARING DATE:

JUNE 15, 1989

APPEARANCES:

BARRY M. WILLOUGHBY, ESQ.- COUNSEL FOR PETITIONER

ERIC L. EPISCOPO, ESQ.- ASSISTANT CITY SOLICITOR

BACKGROUND

The City of Wilmington (hereinafter the "City" or "Respondent") is a public employer within the meaning of 19 Del.C. section 1602 (1). The International Association of Firefighters (hereinafter the "Association" or "Petitioner") is an exclusive representative within the meaning of 19 Del.C. section 1602 (g), of the Police Officers' and Firefighters' Employment Relations Act, 19 Del.C. Chapter 16 (1986) (hereinafter the "Act").

The Association and the Fraternal Order of Police, Lodge No. 1, filed unfair labor practice charges against the City of Wilmington on May 31, and June 5, 1989, respectively. The complaints charge the City with unilaterally modifying a "term and condition of employment", i.e. employee health plans, during the term of an existing collective bargaining agreement in violation of sections 1607 (a)(5) and (a)(1) of the Act.

Because of the imminent imposition of the alleged changes, the petitioners requested the Public Employment Relations Board to grant preliminary injunctive relief. A joint conference was held on June 7, for the purpose of ruling on the request for injunctive relief and scheduling further proceedings in the matter. Based on the City's assurance that the existing health plans would be continued until July 31, the petitioners withdrew their request for interim relief. The charges were joined at the request of the parties and the PERB agreed to hear the matter on an expedited basis. A hearing was held on June 15, 1989.

After the conclusion of the hearing, a question concerning the propriety of the joinder was raised by the Hearing Officer who

ultimately ruled the joinder of the petitions to be improper. The basis for the ruling rests upon the difference in the relevant contractual language contained in the petitioners two labor contracts with the City. The contract language is of critical importance because the parties agree that the status quo, which the City is alleged to have unilaterally altered, is a function of the contract language. Since the relevant language in the two contracts is different, it is possible that the status quo under each contract could differ and, therefore, so too the resolution of the underlying issue itself. For this reason the cases were severed and the opinion and decision contained herein are based solely on the record as it relates to the issue(s) raised in the Association's complaint, U.L.P. #89-05-037.

FACTS

The material facts may be summarized, as follows:

The parties are and, at all times material to this dispute, have been bound by the provisions of a collective bargaining agreement effective July 1, 1987 through June 30, 1990. Article VIII, Health and Welfare, provides in relevant part:

SECTION 1. All employees within the bargaining unit herein specified shall be covered by one of the benefit packages provided by the City and described in Appendix A, attached hereto. This in no way restricts the City from changing the carrier to carriers of insurance, however, the City agrees to maintain at a minimum the exact levels of coverage item for item, benefit for

benefit, for each plan listed in Appendix A, should a decision be made to change carriers. The cost of coverage (except for the COMP 100 benefits package, which requires an employee contribution described in Appendix A) shall be borne by the employer. Each employee may choose any one benefit package included in Appendix A. The benefits provided by the packages contained in Appendix A will begin on July 1, 1987.

Appendix" A" contains the following index:

- A-1 - Brief Description of all Health Plans
- A-2 - HMO of Delaware (no co-pay)
- A-3 - HMO of Delaware (\$5.00 co-pay)
- A-4 - Health Plan of Delaware
- A-5 - Incentive Health Plan
- A-6 - Total Health Plus
- A-7 - Comprehensive 100
- A-8 - Healthcare Delaware
- A-9 - Dental Coverage Description
- A-10- Other Benefits Issues Agreed to by the Parties

On May 12, 1989, Mr. David N. Randall, Director of Risk Management and Employee Benefits for the City of Wilmington, sent a memo entitled "Benefit Re-Enrollment" to Mr. Wayne Warrington, President of the Association. (Attachment 1) The opening paragraph of the memo provides:

We just finished negotiations with all health carriers and are ready for the annual benefit

re-enrollment. As has always been the case, recently, there will be some changes in the programs offered.

In summary form, changes specifically addressed include, among other things, the following items from Appendix A:

- * the creation of new deductibles and co-insurance payments by employees for HMO of Delaware and Total Health Plus (packages A-3 and A-6).
- * the elimination of HMO of Delaware/no co-pay (package A-2).
- * the elimination of Incentive Health Plan and Comp 100 (packages A-5 and A-7).
- * the creation of a new package entitled Comprehensive Major Medical.

The memo also states that "for the first time this year, the City will offer employees the option of cancelling their health benefits and opting for a \$100.00 per month cash-out", provided they have health protection elsewhere. (Attachment 2)

In an undated communication from Albert F. Carter, Jr., Director of Personnel for the City, the employees were advised of "many changes in the benefit plans" and that "for the first time ever, the City will allow you to drop your health coverage should you have coverage elsewhere. If you drop your coverage through the City, the City will pay you \$100.00 per month.....". The memo also informed the employees that re-enrollment was mandatory and failure to do so may result in loss of health coverage.

As a result of the City's solicitation of questions concerning the health plans, the parties met on or about May 26, June 5 and June

12. On June 6, the City forwarded to the Petitioner the City's benefit proposal resulting from the discussions of June 5th. (Attachment 3)). In essence, the proposal reaffirms the position of the City, as set forth in its memo of May 12, except for paragraph G which provides a "make-whole" arrangement for employees currently enrolled in HMO of Delaware or Total Health Plus who transfer to either the St. Francis or Principal sponsored HMO for reason of a non-covered benefit should that same claim have been a covered benefit of their previous plan (THP or HMO). The "Make-whole" guarantee does not, however, apply to the addition or increase in fixed dollar co-payments or for claims denied for reasons other than as a result of a non-covered benefit.

ISSUES

The parties jointly submitted the following two issues:

First: In light of the parties collective bargaining agreement, did the City violate the Act by issuing its May 12, 1989 benefits notice and/or by seeking to implement its June 6, 1989 benefits plan?

Second: Assuming arguendo that the City would violate the Act by implementing the June 8, 1989 benefits plan, what remedy or remedies may the Board fashion?

POSITIONS OF THE PARTIES

Petitioner:

The petitioner maintains that the City of Wilmington unilaterally altered the status quo of a mandatory subject of bargaining i.e., employee benefits, during the term of an existing collective bargaining agreement without first negotiating with the

exclusive bargaining representative and without its consent. Petitioner argues that the language of Article VIII of the collective bargaining agreement is clear and unambiguous on its face and establishes the status quo. The Association also argues that the City has not merely changed carriers, as it contends. The Association maintains that the City has not only unilaterally eliminated and modified existing plans but also created new plans, as expressly set forth in its communications of May 12 and June 8. The Union argues that by its unilateral action, the results of which are scheduled for implementation at the end of July, 1989, the City has violated Sections 1605 (a)(1) and (5), of the Act.

Respondent:

The City argues that there has been no unilateral change implemented by the City since, at the time of the hearing, the health plans then available under current collective bargaining agreement had not changed. Secondly, the City argues that unilateral modification of the existing health plans within certain parameters is contemplated by Article VIII of the collective bargaining agreement. The City maintains that it has only exercised this contractual right by unilaterally changing insurance carriers while maintaining the exact levels of coverage.

DECISION

The parties each cite prior PERB decisions to support their respective positions. Although these prior decisions involve local school districts and their certificated professional employees, relevant provisions of the Public School Employment Relations Act, 14

Del.C. sections 4001-4018 (Supp. 1982), upon which they were decided, and comparable provisions of the Police Officers and Firefighters Employment Relations Act, 19 Del.C. sections 1601-18 (Supp. 1986), which controls the current matter are identical.

The teacher cases hold that during post-contract expiration negotiations concerning the terms of a successor agreement, neither party may unilaterally alter the status quo of a mandatory subject of bargaining, at least to the point of impasse. Appoquinimink Education Association v. Board of Education of the Appoquinimink School District, Del. PERB, ULP No. 1-2-84A (July 23, 1984); Brandywine Affiliate/NCCEA/DSEA/NEA v. Brandywine School District Board of Education, Del. PERB, ULP No. 1-9-84-6B (November 20, 1984).

In the case of Smyrna Educators' Association v. Board of Education of the Smyrna School District (Del. PERB, ULP No. 87-08-015 (October 26, 1987)), the holdings of the Appoquinimink and Brandywine cases were extended to include a unilateral change which occurred during the term of an existing collective bargaining agreement. Quoting from NLRB v. Acme Industrial Co. (385 US 432 (1967)), the PERB in Smyrna concluded that "the duty to bargain unquestionably extends beyond the period of contract negotiation and applies to labor management relations during the term of the agreement".

In New Castle County Vo-Tech Education Association v. New Castle County Vo-Tech School District (Del. PERB, ULP No. 88-05-025 (August 19, 1988), aff'd. Del. PERB, ULP No. 88-05-025A, (September 30, 1988)), the school board was held to have unilaterally altered the status quo and therefore breached its statutory duty to bargain in good-faith. when, after its contract with the teachers association had expired and

mediation been requested, it required the employees to contribute toward the cost of existing health plans which, under the terms of the expired collective bargaining agreement, had been 100% funded by the employer.

Whether the City of Wilmington unilaterally implemented a mid-term change in the status quo of the existing health plans or, as it claims, merely exercised its contractual right to change carriers can only be determined by a review of the relevant facts. According to the testimony of Mr. Randall, the City began negotiating the substance of its existing health plans with the plan carriers, particularly Blue Cross-Blue Shield, in approximately mid-December, 1988. The first communication to the Petitioner from the City of planned changes to the employee health plans occurred some five (5) months later in Mr. Randall's May 12, memo to the Association's President, Wayne Warrington. The City acknowledges that the substance of the health plans contained in Mr. Randall's letter was developed without any input from the Petitioner.

In reality, the City chose not to bargain with the certified bargaining representative of its employees as it is legally required to do under the Act; rather, it chose to negotiate independently with the plan carrier(s) and then advise the exclusive bargaining representative and the employees of the results of those negotiations as they affected the status of the health plans to be offered during the third year of the collective bargaining agreement. In so doing, the City acted in a unilateral fashion to the exclusion of the petitioner.

To be actionable, however, the City's action must have modified

the status quo of a mandatory subject of bargaining. The parties acknowledge that the subject of health care protection constitutes a mandatory subject of bargaining. The critical question, therefore, becomes whether or not the status quo was, in fact, altered. In post-contract expiration cases, the relevant provisions of an expired agreement may serve as an aide in determining the status quo.

Appoquinimink Ed. Assoc. v. Bd. of Ed. (Supra.) In cases where the parties are currently bound by a valid agreement, however, contractual language which is clear and unambiguous on its face effectively establishes the status quo. In the case at hand, the language of Article VIII falls into this category and establishes as the status quo the existence of multiple individual health plans which are set forth in Appendix A of the collective bargaining agreement and from which an employee may choose any one most closely meeting his/her personal needs. The only right retained by the City concerning these plans is the ability to change carriers, provided it agrees to maintain at a minimum exact levels of coverage item for item, benefit for benefit, for each plan listed in Appendix A.

The text of Mr. Randall's May 12, memo unequivocally provides: "...there will be some changes to the programs offered"..."the biggest change is"..."For the first time this year"..."Blue Cross will no longer offer Comprehensive 100 or Incentive Health Plan but will offer a new traditional plan called Comprehensive Major Medical"..."The HMO of Delaware program with no co-pay will not be offered". Mr. Carter, in his undated communication to all employees, makes similar references, such as "Since there are many changes in the benefit plans ..." and "The City has negotiated a new traditional plan...", "All

changes will be described in more detail at the Health Fairs which are scheduled during the next two weeks".

The City's position at the hearing was the same as that communicated to the Petitioner on May 12, as clarified by its letter of June 6. {1} Thus, employees who were previously covered under the HMO of Delaware (no co-pay) would become responsible for the entire co-pay charge of \$5.00 per occurrence while those employees previously responsible for a \$3.00 co-pay would become responsible for an additional \$2.00 co-pay per occurrence.

The City's argument that it has merely substituted carriers as it is contractually permitted to do is premised on its conception of what constitutes a "benefit". The City defines "benefit" as a service received by an employee under the available health plans. As long as benefits available under the prior plans remain available under the new plans the City maintains that it has fulfilled its contractual and statutory obligations.

The City views its responsibilities under both the law and the contract too narrowly. The PERB has previously held:

The status quo, as it relates to the payment of medical insurance premiums, includes not only the dollar amount contributed by the employer but also the amount of money, if any, paid by the employees. Any unilateral change in this relationship constitutes an impermissible change in the status quo through the alteration

{1} At the hearing it was established through the testimony of Mr. Randall that, notwithstanding the literal language of the City's June 6, communication, its "make-whole" commitment was intended to include all claims covered by HMO of Delaware or Total Health Plus, except for newly imposed or increased employee co-payments for prescription drugs and doctor visits.

of a term and condition of employment and, therefore, violates the Act. New Castle County Vo-Tech. (Supra.) The health plans to be implemented by the City for the third year of the labor contract include new and/or increased employee co-payments and deductibles. Whatever their form, employee contributions serve to defray the cost of a particular plan and constitute a form of premium payment.

The City's reliance on the contract language of Article VIII is likewise unpersuasive. The contract requires the City to maintain not only exact levels of coverage "benefit for benefit", but also "item for item"... "for each plan listed in Appendix A". Article VIII also provides that "Each employee may choose any one benefit package included in Appendix A". Clearly, the intent of this language is to preserve the overall integrity of each individual alternative health plan. Accordingly, the City's obligation to maintain the status quo extends beyond maintaining an individual "benefit" (as defined by the City) to the overall content of each plan. In response to a question from the Hearing Officer under what conditions the City would consider exercising its contractual option to change carriers, Mr. Randall stated, as examples, where a carrier was no longer willing to provide a given plan or where the cost of an established plan became unacceptable to the City. This is precisely the circumstance confronting the City here; yet, there is nothing on the record to establish any effort by the City to investigate this alternate course of action.

Equally unpersuasive is the City's contention that it "took a first step in which it provided the Union with adequate notice of impending changes". The May 12, notice upon which the City relies constitutes nothing more than notice of planned changes, as

specifically referenced in the text of the memo, and an invitation to contact the writer if there were questions. Such after-the-fact notice does not constitute an invitation to enter into good-faith bargaining required by Section 1602 (d), of the Act. Nowhere in the record is there evidence of any meaningful negotiation between City and the Association concerning the intended modifications to the existing health plans. Only after the City had concluded its unilateral negotiations with the plan carriers did it advise the exclusive representative and the employees of the results and offer to entertain questions and comments on the changes. These changes included elimination of the existing HMO of Delaware (no co-pay); creation of a new traditional major medical plan; elimination of the existing Comp 100 plan and the Incentive Health Plan; and, implementation of co-pays and deductibles for Total Health Plus and HMO of Delaware, where none currently exists. In addition, the City is also offering, "for the first time", an across-the-board buy-out option for employees who have health care protection elsewhere.

Based on the record, one can only reasonably conclude that the City of Wilmington unilaterally altered the status quo of a mandatory subject of bargaining during the term of an existing collective bargaining agreement without first negotiating, or attempting to negotiate, with the exclusive bargaining representative and, in so doing, has breached its statutory duty to bargain-in-good faith.

Aside from the Respondent's duty to bargain, the Association argues that no mid-term change in the status quo of a mandatory subject of bargaining is permissible without its prior consent. Although the issue in Smyrna Educators' Association (Supra.) involved the employer's

obligation to bargain a mid-term change, the PERB acknowledged the existence of a parallel question concerning the Association's duty to bargain under such circumstances. In this regard, the PERB cited a case wherein the National Labor Relations Board concluded that no party may institute a change in a term or condition of employment covered in a current collective bargaining agreement without the consent of the other party. C&S Industries, Inc., 158 NLRB 454, 62 LRRM 1043 (1966). The C&S Industries case is distinguishable from the issue here in that the NLRB ruling involved a private sector case which interpreted Section 8(d) of the National Labor Relations Act. {2} Section 8(d) provides, in relevant part, that neither party is required "to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract". There is no comparable language in the Delaware Police and Firefighters Employment Relations Act.

Several provisions of the Delaware statute do, however, bear on this question by establishing both the legislative purpose and the statutory framework for fulfilling that purpose. 19 Del.C. section 1601. {3} Of paramount importance is the maintenance of harmonious and

{2} 29 U.S.C. section 69 (Supp. 1981)

{3} Section 1601, Statement of Policy, provides, among other things, that "...it is the declared policy of the State and the purpose of this chapter to promote harmonious and cooperative relationships between public employers and their employees, employed as police officers and firefighters, to protect the public by assuring the orderly and uninterrupted operations and functions of public safety services. These policies are best effectuated by: ..."(2) Obligor public employers and organizations of police officers and firefighters which have been certified as representing their employees to enter into collective bargaining negotiations with the willingness to resolve disputes relating to terms and conditions of employment and to reduce to writing any agreements reached through such negotiations."

cooperative relationships between public employers and their employees and to assure the orderly and uninterrupted operation and functions of public safety services. Stability in the relationship is to be achieved by requiring the parties to bargain collectively over terms and conditions of employment. 19 Del.C. section 1602(d). {4} In order to assure an adequate period for meaningful negotiations, the legislature required the commencement of the collective bargaining process ninety (90) days prior to the expiration of an existing collective bargaining agreement. Absent the agreement of the parties to the contrary, contracts are required to be for a minimum term of two (2) years. 19 Del.C. section 1613. {5} In cases where agreement is not reached, the legislature provided the opportunity for third-party assistance in resolving the stalemate through the impasse resolution processes of mediation and fact finding. {6}

{4} 19 Del.C. section 1602(d) provides:

Collective bargaining" means the performance of the mutual obligation of a public employer through its designated representatives and the exclusive bargaining representative to confer and negotiate in good faith with respect to terms and conditions of employment, and to execute a written contract incorporating any agreements reached. However, this obligation does not compel either party to agree to a proposal or require the making of a concession.

{5} Section 1613, Collective Bargaining Agreements, provides:

(a) Collective bargaining shall commence at least 90 days prior to the expiration date of any current collective bargaining agreement or, in the case of a newly-certified exclusive representative, within a reasonable time after certification...

(d) Any contract or agreement reached between a public employer and any exclusive representative shall be for a minimum period of 2 years from the effective date of such contract or agreement, unless otherwise mutually agreed upon by the public employer and the exclusive representative.

{6} 19 Del.C. sections 1614 and 1615 provide for the assistance of impasse resolution procedures, namely mediation and fact-finding, respectively, where the parties are unable to resolve their differences.

The statute also requires the parties to reduce to writing and sign any agreements reached. Failure to do so constitutes an unfair labor practice, under the Act. {7} This required documentation not only records the agreements reached but also attests to the parties' willingness to be bound and, as such, constitutes a legally binding contract. Having done so, the statutory duty to bargain over the subject matter contained therein for the term of the agreement has been satisfied. While a party may voluntarily agree to a request to re-open negotiations, it is not required to do so. Stated differently, a party may not make unilateral changes to a contract and, therefore, the status quo during the life of the agreement without the consent of the other. To hold otherwise would be contrary to the clear intent of the statutory language and render it meaningless. A contrary ruling would also be inconsistent with established case law concerning the right of the parties to institute unilateral changes during post-contract expiration negotiations.

The decision reached herein is based upon the individual circumstances of these parties. There may, however, be circumstances totally beyond the control of the parties and of such magnitude as to render the maintenance of the status quo under an existing collective bargaining agreement impossible. Nothing of this nature has been either pleaded or proved here. The testimony of both Mr. Randall and Mr. Carter establish that it was the City which proposed that the term of the current collective bargaining agreement be for a three year

{7} Section 1607, Unfair Labor Practices - Enumerated, provides at paragraphs (a)(4) and (b)(7), respectively, that it shall be an unfair labor practice for a public employer or its designated representative or for an employee organization or its designated representative to "Refuse to reduce an agreement, reached as a result of collective bargaining, to writing and sign the resulting agreement".

period. At the time of the original negotiations, City representatives were admittedly aware that the contracts with the insurance carriers for the negotiated health plans contained in the labor contract were for a period of lesser duration. However, no attempt was made at the time to remedy this situation. Testimony also established that identical coverage, benefit for benefit, item for item for each of the existing health plans was available during the third year of the collective bargaining agreement at a somewhat increased cost, a condition the City was not willing to accept.

Lastly, the fact that at the time the Petitioner filed its charge on May 31, no new plans had yet been implemented by the City does not alter the decision. Negotiations with the carriers had been completed when the changes were communicated to both Association President and the employees. Since that time, the only meaningful action taken by the City to alter its course of action was to implement a limited "make-whole" guarantee and to delay the implementation of the changes for approximately one month.

CONCLUSIONS OF LAW

1. The City of Wilmington is a public employer within the meaning of 19 Del.C. section 1602 (1), of the Act.

2. The International Association of Firefighters is an exclusive representative within the meaning of 19 Del.C. section 1602 (g), of the Act.

3. The subject of employee health plans is a mandatory subject of bargaining within the meaning of section 1602 (n), of the Act.

4. By issuing its May 12, 1989 benefits notice the City of Wilmington unilaterally instituted a change in the status quo of a mandatory subject of bargaining without bargaining with and without the consent of the exclusive representative of the affected employees in violation of 19 Del.C. section 1607(a) (5), of the Act.

5. By seeking to implement its June 6, 1989 benefits plan the City of Wilmington unilaterally instituted a change in the status quo of a mandatory subject of bargaining with and without the consent of the exclusive representative of the affected employees in violation of section 1607 (a)(5), of the Act.

6. By the totality of its conduct, the City of Wilmington has interfered with restrained and coerced its employees in the exercise of rights guaranteed under the Police and Firefighters Employment Relations Act, in violation of section 1607 (a)(1).

WHEREFORE THE CITY OF WILMINGTON IS HEREBY ORDERED TO:

A. Cease and Desist from continuing to implement the June 8, 1989 benefits plan.

B. Maintain the status quo of the existing individual health plans item for item, benefit for benefit and as is otherwise required by and consistent with Article VIII and Appendix A of the existing collective bargaining agreement and the opinion set forth herein.

C. Take the following affirmative action:

1. Issue a written rescission of any and all notices pertaining to a mandatory re-enrollment period and the possible loss of health protection for failure to comply.

2. Within ten (10) calendar days from the date of receipt of

- this decision, post a notice of the attached NOTICE OF DETERMINATION in each Firehouse within the City where notices of general interest to firefighters are normally posted. The notice shall remain posted for a period of thirty (30) days.
3. Notify the Public Employment Relations Board in writing within thirty (30) calendar days from the date of this ORDER of the steps taken to comply with the ORDER.

IT IS SO ORDERED.

DATED: June 26, 1989

Charles D. Long, Jr.

CHARLES D. LONG, JR.

Hearing Officer

DANIEL S. FRAWLEY
MAYOR

City of Wilmington
Delaware

CITY/COUNTY BUILDING
800 FRENCH STREET
WILMINGTON, DELAWARE
19801-3537



DIRECT DIAL NUMBER

TO: Wayne Warrington
President
IAFF Local 1590

FROM: David M. Randall
Director
Risk Management & Employee Benefits

DATE: May 12, 1989

RE: Benefit Re-Enrollment

We have just finished negotiations with all the health carriers and are ready for the annual benefit re-enrollment. As almost always has been the case, recently, there will be some changes to the programs offered.

The biggest change is with the Blue Cross/Blue Shield programs including the HMO of Delaware (HMO) and Total Health Plus (THP). These insured plans offered by the Blues include new deductibles and require co-insurance payments from employees. The changes can best be summarized as follows:

Preventative care will remain the same for HMO of Delaware and Total Health Plus. Other care will be subject to a \$100.00 deductible and pay for 80% of the next \$10,000.00 services received. After this level has been reached all claims will be covered 100%. The HMO of Delaware program with no co-pay will not be offered.

Blue Cross will no longer offer Comprehensive 100 or Incentive Health Plan but will offer a new traditional plan called Comprehensive Major Medical. Under this plan you may select your own physician. This plan pays for 80% of your expenses after a \$100.00 deductible for individual coverage subject to a maximum cost to the employee. There will be no premium changed to the employee for this plan.

The Doctors HMO, now called Principal Health Care, has changed to a referral system. However, benefits for Principal and Healthcare Delaware (St. Francis) remain the same as last year.

This year all employees in your union will receive Long Term Disability coverage and a dental benefit of \$1000.00 maximum per family.

For the first time this year, the City will offer employees the option of cancelling their health benefits and opting for a \$100.00 per month cash-out. The cash-out will only be available to employees' who have health coverage through their spouses' employer or some other health benefit program. The monthly cash benefit may be placed in the employees deferred compensation account, child care spending account or taken as cash. Benefits taken as cash will be considered as taxable income.

I am sure your membership will have questions concerning these changes. Myself and members of my staff will be available to review the plans. Also, the individual providers will conduct Health Fairs to review their respective products during the weeks of May 22nd. through June 2nd. (Meetings to be announced)

If you have any questions please feel free to contact me.

DMR/smd

DANIEL S. FRAWLEY
MAYOR

City of Wilmington

Delaware

CITY/COUNTY BUILDING
800 FRENCH STREET
WILMINGTON, DELAWARE
19801-3537

DIRECT DIAL NUMBER



Dear Employee:

Once again it is time for all employees to make their annual selection of Health Benefits. Since there are many changes in the benefit plans, re-enrollment is Mandatory for all City employees. Everyone is strongly urged to attend the education Health Fairs to help fully inform you of all changes. A schedule of Health Fairs is attached.

CHANGES TO BLUE CROSS/BLUE SHIELD PLANS:

Blue Cross/Blue Shield will no longer offer the Comprehensive 100 or Incentive Health Plan to City employees. The City has negotiated a new traditional plan, Comprehensive Major Medical, with Blue Cross/Blue Shield.

100 Comp?

Comprehensive Major Medical - This plan is a traditional insurance program which you may select your own physician and other health care providers. Services you receive will be subject to a \$100.00 deductible per person/\$300.00 per family. After you fulfill your deductible, Blue Cross will pay 80% of further costs. Your total out-of-pocket cost cannot exceed \$500.00 per person/\$1,500.00 per family. Once the maximum is reached, Blue Cross will cover all additional expenses at 100%. Some preventative services will be provided at no cost.

7 total plans HMO

All employees will be eligible to enroll for this plan. The City will pay the full premium for this and all other health care programs.

Total Health Plus and HMO of Delaware - These plans will continue to be offered. However, Blue Cross has included new deductibles on certain services. Doctor visits for preventative care will continue to be \$5.00. Hospitalization and some other benefits will be subject to a \$100.00 deductible per person/\$200.00 per family and then 80% of expenses will be covered. Maximum out-of-pocket costs per year to the employee will be \$2,000.00 per individual/\$4,000.00 per family. Once the maximum is reached, Blue Cross will cover all additional expense at 100%.

BENEFIT ENHANCEMENTS:

Long Term Disability - All employees will be offered this important coverage at no cost.

Dental Reimbursement Program - The maximum family reimbursement has been increased to \$1,000.00 per year. Claims will continue to be reimbursed at 75%.

Supplemental Life Insurance - All employees will be eligible to purchase \$5,000.00 supplemental life insurance. The cost of this insurance will be \$2.50 per month.

CASH BACK PROGRAM:

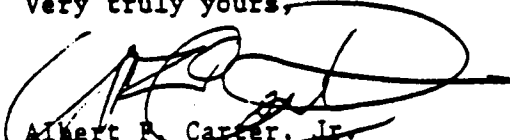
For the first time ever, the City will allow you to drop your health insurance coverage should you have coverage elsewhere. If you drop your coverage through the City, the City will pay you \$100.00 per month which can be credited to your deferred compensation account, child care spending account, or taken as cash. (Amounts taken as cash will be taxable). All your other benefits will continue, i.e. Dental, Long Term Disability, Life Insurance, etc.

All changes will be described in more detail at the Health Fairs which are scheduled during the next two weeks.

Re-enrollment which is MANDATORY is taking place from June 5 through June 16. A schedule of meetings at your department will follow. You must attend to be re-enrolled or you may lose your health coverage.

For questions please call Nancy Clark Roberts or Sharon Davis at 571-4685.

Very truly yours,



Albert R. Carter, Jr.
Director of Personnel

AFC/smd

DANIEL S. FRAWLEY
MAYOR

City of Wilmington
Delaware

CITY/COUNTY BUILDING
800 FRENCH STREET
WILMINGTON, DELAWARE
19801-3537



DIRECT DIAL NUMBER

571-4200

HAND DELIVER

June 6, 1989

Barry M. Willoughby, Esquire
Young, Conaway, Stargatt & Taylor
Rodney Square North
P.O. Box 391
Wilmington, DE 19899

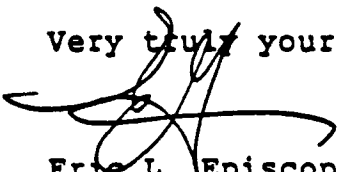
Re: City's Benefits Proposal

Dear Barry:

Enclosed please find the City's benefits proposal which was discussed at our meeting yesterday, June 5, 1989.

I would appreciate you contacting me as soon as possible concerning the Union's position. I will be available this afternoon in my office.

Very truly yours,


Erie L. Episcopo
Assistant City Solicitor

/sss
Enclosure

cc: Albert F. Carter, Jr.
Director of Personnel
David Randall
Risk Manager

BENEFITS PROPOSAL

A. THE FOLLOWING PLANS WILL BE OFFERED BY THE CITY:

HEALTHCARE DELAWARE (ST. FRANCIS)
PRINCIPAL HEALTHCARE OF DELAWARE (PRINCIPAL)
BLUE CROSS/BLUE SHIELD COMPREHENSIVE MAJOR MEDICAL(CMM)

B. THE FOLLOWING PLANS WILL NO LONGER BE OFFERED BY THE CITY:

TOTAL HEALTH PLUS (THP)
HMO OF DELAWARE (HMO)
BLUE CROSS/BLUE SHIELD INCENTIVE HEALTH PLAN (IHP)
BLUE CROSS/BLUE SHIELD COMPREHENSIVE 100 (C100)

C. THE CITY WILL PAY THE FULL PREMIUM FOR ALL OFFERED PLANS.

D. THE CITY WILL PROVIDE AND PAY THE FULL PREMIUM OF LONG TERM DISABILITY INSURANCE FOR ALL EMPLOYEES.

E. THE MAXIMUM DENTAL BENEFIT AVAILABLE WILL BE INCREASED TO \$1000 PER FAMILY PER YEAR FOR ALL EMPLOYEES.

F. ANY EMPLOYEE WHO HAS HEALTH COVERAGE THROUGH ANOTHER SOURCE, I.E. SPOUSE'S EMPLOYMENT, MAY ELECT NOT TO RECEIVE COVERAGE FROM THE CITY AND RECEIVE INSTEAD A MONTHLY CASH OPTION OF \$100.

G. ANY EMPLOYEE CURRENTLY ENROLLED IN THP OR HMO, WHO ENROLLS IN EITHER ST.FRANCIS OR PRINCIPAL WILL BE REIMBURSED FOR ANY CLAIM THAT IS DENIED BY THEIR NEW CARRIER (ST. FRANCIS OR PRINCIPAL) FOR REASON OF A NON COVERED BENEFIT SHOULD THAT SAME CLAIM HAVE BEEN A COVERED BENEFIT OF THEIR PREVIOUS PROGRAM(THP OR HMO). THE CITY WILL NOT REIMBURSE FOR DIFFERENCES IN FIXED DOLLAR CO-PAYMENTS OR FOR CLAIMS WHICH WERE DENIED FOR REASONS OTHER THAN AS A RESULT OF A NON-COVERED BENEFIT. THE REIMBURSEMENT WILL BE SUBJECT TO THE MAXIMUM BENEFIT PAYABLE UNDER THE EMPLOYEE'S PREVIOUS PLAN.

H. THIS PROPOSAL IS CONTINGENT ON BLUE CROSS/BLUE SHIELD AGREEING TO OFFER COMPREHENSIVE MAJOR MEDICAL UNDER THE ABOVE CONDITIONS TO THE CITY ON A FULLY INSURED BASIS.



OFFICIAL AND COMPLETE
TEXT OF DECISION
AVAILABLE AT PERB OFFICE.

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD
CARVEL STATE OFFICE BUILDING
820 FRENCH STREET
WILMINGTON, DELAWARE 19801

TELEPHONE: (302) 571 - 2959

NOTICE OF DETERMINATION

LOCAL 1590, INTERNATIONAL ASSOCIATION :
OF FIREFIGHTERS, :
:
v. : U.L.P. No. 89-05-037
:
CITY OF WILMINGTON :

I. By issuing its May 12, 1989 benefits notice, the City of Wilmington unilaterally implemented a change in the status quo of a mandatory subject of bargaining without bargaining with and without the consent of the exclusive bargaining representative of the affected employees in violation of 19 Del.C. section 1607 (a)(5) of the Police Officers' and Firefighters' Employment Relations Act.

II. By seeking to implement its June 8, 1989 benefits plan, the City of Wilmington unilaterally implemented a change in the status quo of a mandatory subject of bargaining without bargaining with and without the consent of the exclusive bargaining representative of the affected employees in violation of 19 Del.C. section 1607 (a)(5).

III. By the totality of its conduct, the City of Wilmington has interfered with, restrained and coerced its employees in the exercise of rights guaranteed, in violation of 19 Del.C. section 1607 (a)(1).

IV. WHEREFORE, THE CITY OF WILMINGTON IS HEREBY ORDERED TO:

- A. CEASE AND DESIST from continuing to implement the June 8, 1989 benefits plan.
- B. Maintain the status quo of the existing individual health plans, item for item, benefit for benefit as otherwise required by and consistent with Article VIII and Appendix A of the existing collective bargaining agreement.
- C. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS:
 1. Issue a written rescission of any and all notices pertaining to a mandatory re-enrollment period and the possible loss of health protection for failure to comply
 2. Within ten (10) calendar days from the date of this Order, post a notice of this Notice of Determination in each firehouse within the City where notices of general interest to firefighters are normally posted. These notices shall remain posted for a period of thirty (30) days.
 3. Notify the Public Employment Relations Board in writing within thirty (30) calendar days from the date of this Order of steps taken to comply with this Order.

DATED: June 26, 1989

Charles D. Long, Jr.
Charles D. Long, Jr.